

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 204 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BIJAL REVASHANKER JOSHI

Versus

STATE OF GUJARAT

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Appearance:

MR PD DAVE for Petitioner

Mr J M Thakore, Advocate General with Mr D N Patel,

APP for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision:28/02/97

JUDGEMENT

This Special Criminal Application under Article 226 of the Constitution of India has been filed by Ms. Bijal R Joshi, informant in the case known as "Sabarmati Jail blast conspiracy case", seeking direction against State Government not to direct further investigation in

the said case.

2. Ms. Bijal Joshi, aged 19 years, daughter of a retired mill worker and a student of C.U. Shah Arts College situated in the city of Ahmedabad, is alleged to have been employed in the circumstances mentioned in the complaint as part of the conspiracy for the escape of some of the most notorious criminals including Pakistani spies and Anti-Nationals, against whom there is order under section 268 of the Criminal Procedure Code not to remove them outside the prison. It is also alleged that Ms. Bijal Joshi was trained in martial arts etiquette and arts of conversation to achieve the object. After the training, accused Sayed Pirzada explained to Bijal her mission. She was instructed to visit Sabarmati jail, and to visit certain prisoners viz; Abdul Wahab, Javedkhan, Usmangani Noormohmad, Mohammad Sherif, Sattar Battery. She was also booked by the most wanted ISI agent who would also to be contacted for vital information. It is also the case of the prosecution that on various occasions she visited Sabarmati jail acted as a courier between criminals having link with Latif and Pakistan Intelligence Agency ISI. A plan was also arranged for the escape of Javed Khan from jail and replace him with his duplicate. A conspiracy was also hedged to blow up the entire Sabarmati jail complex and Bijal be sent to Pakistan permanently, showing that she had died in the blast. Investigation also revealed that Mr V Kanu Pillai, the Addl. Inspector General (Prison), at the relevant time, Jail Superintendent L V Kharadi and Dr. Ramesh J Dave and Dr. Sutaria, all the four Government officials played role in the conspiracy. It is also alleged that Kanu Pillai misused his official position as Inspector General of Police (Prison) by facilitating the visit of Bijal Joshi to jail. He obtained illegal gratification from accused No.6 to have sexual intercourse with Bijal Joshi and issued permission to her. Bijal alleged to have made a statement that she was being raped by V K Pillai at his house in Gandhinagar and again in his official chamber. The conspiracy could be burst only when Mr Pillai was shifted as Managing Director of Gujarat Police Housing Corporation and Mr Tamhane took over as new Inspector General of Police (Prison). Mr Tamhane withdrew the permission granted to Bijal. Bijal revealed the conspiracy only when she was given full protection by the Anti Terrorist Squad (ATS). After investigation the police has filed charge sheet against 12 accused persons for various offences under section 170, 419, 366, 376, 342 and 120-B and under sections 7, 12, 13(1)(d) of the Prevention of Corruption Act, 1988. The accused persons are facing trial. One of

the accused, namely; "Tiger" is still absconding. The sanction is not given for one of the accused. The Special Judge, City Civil Court has framed charges against 11 accused persons. Three of them have challenged the order of framing charge by way of Revision before this Court.

3. Mr J Mahapatra, Secretary, Home Department, State of Gujarat has filed an affidavit. It is stated that Mr V K Pillai, one of the accused in the case submitted representation on 27.10.1996 in which he has mentioned about the hostile relationship with Mr S N Sinha, Director General of Police and Mr K V Joseph, Director, ACB who had supervised the investigation of the case. Mr Pillai has also given instances of hostility between him and the said officers. The further say of Mr Mahapatra is that the representation of Mr Pillai was considered by the State Government at various levels upto the highest. The prayer of Mr Pillai with respect to dropping the prosecution against him was rejected. However, looking to the grievance ventilated by Mr Pillai particularly of the two senior Police Officers connected with the investigation and further that there are certain material aspects in the investigation which were left out or not properly investigated, it was considered to direct further investigation. The original file dealing with the question of further investigation has been placed before me. I have gone through the file. It is neither advisable nor desirable to state details in this order. Suffice it to say that I do not find any malafides on the part of the State Government in giving direction for further investigation. The police has power under sub-section (8) of section 173 to further investigate in respect of offence after report under sub-section (ii) has been forwarded to the Magistrate. This position has not been disputed by the learned Advocate for the petitioner. If need be, references may be given to the decision of the Apex Court in the case of Ram Lal Narang vs. State (Admn), reported in AIR 1979 SC 1791, and in the case of Randhir Singh Rana vs. The State Being Delhi Administration, reported in 1997(1) Crimes 58(SC). Dealing with section 173(8) in M/s.Jayant Vitamins Ltd. vs. Chaitanyakumar & Anr., reported in JT 1992(4) SC 487, the Supreme Court has held that the power of investigation into an offence is statutory function of the police and the power of superintendence is vested in the State Government. The Court held that the High Court would not be justified without any compelling and justifiable reasons to interfere with the investigation.

4. Therefore, in my view, the order of the State

Government giving direction for further investigation does not call for any interference.

5. It is however, argued by Mr P D Dave, learned advocate for the petitioner that if at all this Court takes a view that the order for further investigation does not call for any interference, in that event, the investigation may be entrusted to an independent agency outside the State. He submitted that Mr P K Bansal, Addl. Director General of Police, CID Crime Branch to whom the further investigation has been entrusted is friendly with Mr V K Pillai. It is submitted that both of them belong to the same batch of IPS cadre. It is not necessary to go into this allegation as it is stated that Mr P K Bansal has been appointed as Director General of Police, the office which he will resume after 28th February 1997. It is further stated that he is due to retire in the month of May, 1997 and the matter is not to be investigated under his supervision. With respect to the investigation by the CBI, the say of the State Government is that the matter cannot be said to be so complicated which may require investigation by the CBI. However, the learned Advocate General has stated that the State Government will have no objection if the matter is investigated by the CBI, but their only apprehension is that it will further delay the trial. It is also submitted that the independent agency of the State Government is competent to investigate the matter.

6. Having considered the matter in depth and detail and looking to the high position enjoyed by Mr K V Pillai in the police hierarchy, and further the allegations made against the Senior Police Officers, in my view, it would be appropriate if the matter is investigated by an independent agency. Incidentally, I may mention that in the present case, out of the 12 accused persons, 4 are senior and middle level officers in the State Government. The matter has come before the Division Bench of this Court on a letter written by Mr K V Joseph, Director of ACB making grievance with respect to withholding sanction in the present case and in a number of other cases. I have mentioned this fact only with a view to say that even on the point of sanction, there is no unanimity amongst the officials of the State Government and so as ultimately, the matter has come to the court. I am also conscious of the fact that the CBI is a premier investigating agency and it should not be overloaded unless there are compelling reasons, else it may affect its efficiency. I have dealt with this aspect in greater detail in judgment dated 21.2.1997 rendered in Special Civil Application No.101/96 in the case of Dharmishtaben

vs. State. In the said case I have referred to decision of the Apex Court in the case of State of Bihar vs. Rachi Zilla Samta Party, reported in 1996 (3) SC 751 and of Rajasthan High Court in the case of State of Rajasthan vs. Phoolchand, reported in 1991 Cr.L.J. 125.

7. Considering all the facts and particularly that the State Government has also felt necessity of further investigation, in view of the fact that there are serious allegations of investigation being conducted in partisan manner because of the influence of the two senior police officers with whom the relations of Mr Pillai were hostile and further the investigation is wanting on certain important particulars, in my view, to do complete justice with the all parties concerned, it would be just and proper to direct to entrust the investigation to Central Bureau of Investigation. In doing so, I mean no reflection on the credibility of the earlier investigation or the other investigating agency or any officer in the State of Gujarat. I am guided by the larger requirement of justice.

8. In view of the aforesaid, this Special Criminal Application is partly allowed and it is directed that the investigation in Criminal Case No.CR-20/95 be further investigated by the CBI particularly on the points on which the State Government has directed for further investigation which are as under:

1. "When the offence was registered at that time, section 3, 5 and 6 of Official Secret Act as well as section 153(A) and 153(B) of I.P.C. had been applied but the same has been dropped while filing of charge sheet.
2. Similarly while filing charge sheet, section 13(1)(d) of Prevention of Corruption Act has been dropped, such an important section further evidence is required.
3. Place of offence of rape at Gandhinagar is yet to be found out especially when offence of rape has been registered.
4. Whether there was a conspiracy in the aforesaid offence for this aspect also, further investigation is required.
5. Complainant Bijal Joshi has not revealed the facts of the complaint or has not informed any

one else till the same was inquired by A.T.S."

Since the trial is pending and the eight accused persons are in jail and the other officers are facing suspension, it would be expedient if the CBI completes the investigation expeditiously. Papers of investigation shall be entrusted to the CBI latest by 6th March 1997. The CBI will investigate the matter with promptitude and complete the same as far as possible within a period of two months from today. and report to this Court on or before 28.4.1997.

Rule made absolute to the aforesaid extent.

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#### FURTHER ORDER

After the pronouncement of the judgment, learned counsel for the parties submit that a copy of this order may be sent to the C.B.I. as well. It is thus, ordered that a copy of this order be faxed to Director General of CBI, New Delhi and Joint Director, CBI, Bombay forthwith. A copy of the order be also sent to the Superintendent of Police, CBI, Ahmedabad per messenger.

Date: 28.2.1997 (N N MATHUR, J.)